

REMARKS

Claims 1-17 are currently before the examiner.

Restriction requirement

The examiner has entered a restriction requirement calling on applicants to elect from among five, in the examiner's view, distinct inventions:

- I. Claims 1, 2 and 14-17, drawn to a beta-glucan concentrate having a honeycomb structure, classified in class 435, subclass various;
- II. Claims 3 and 4, drawn to a method of preparing a beta-glucan concentrate, classified in class 514, subclass various;
- III. Claim 5, drawn to the use of a beta-glucan concentrate, classified in class 530, subclass various;
- IV. Claims 6-11, drawn to a first method of encapsulating a compound, classified in class 424, subclass various; and,
- V. Claims 12 and 13, drawn to a second method of encapsulating a compound, classified in class 210, subclass various.

Applicants note the following paragraph in the office action:

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

Applicants' response

Applicants have elected the invention of Group I, claims 1, 2 and 14-17, drawn to a beta-glucan concentrate having a honeycomb structure, classified in class 435, subclass various. It is noted that the election responds to each of the requirements of the above quoted paragraph from the office action. Requirement (i) calls on applicants to elect a species or invention. The five groups reproduced above are designated by the examiner as inventions: "Restriction to one of the following inventions ...". The election of Group I therefore fully complies with (i). Requirement (ii) calls on applicants to identify the claims encompassed by the elected invention. These clearly are the claims elected, i.e., 1, 2, and 14-17.

Applicant acknowledges the possibility of rejoinder of the process claims deemed distinct inventions by the examiner in the current restriction requirement and the further

requirement that, to be rejoined, the process claims must include all the limitations of the product claims. Applicant believes that such is already the case since the process claims all include the limitation that the beta-glucan employed in the claimed methods have a honeycomb structure.

Amendment of the Specification

The amendment to the Specification herein is submitted under 37 CFR 1.78, which permits the amendment of an improperly drafted priority claim. The previous priority claim, while correctly setting forth the application serial number of the priority document and correctly identifying its filing date, failed to properly set forth the relationship between it and the current application.

Statement of unintentional delay

The entire delay between the date the claim to priority was due under 37 CFR 1.78(a)(2)(ii) and the date of this amended claim was unintentional.

CONCLUSION

Applicants respectfully request that the petition to amend the priority claim be granted and the election of invention be entered.

Applicants also request a one-month extension in time to respond to the restriction requirement.

The Commissioner is authorized to charge all fees due with this petition and response to Squire Sanders & Dempsey L.L.P. Deposit Account No. 07-1850.

Date: 22 November 2006
Squire, Sanders & Dempsey L.L.P.
One Maritime Plaza, Suite 300
San Francisco, CA 94111-3492
(415) 954-0200

Respectfully submitted,


Bernard F. Rose

Reg. No. 42,112